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D/B/A CHINA INTERNATIONAL TRAVEL SERVICE (USA)

14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17 (SAN FRANCISCO DIVISION)

18 CHINA INTL TRAVEL SERVICES (USA),
INC.,

19 Plaintiff,

20 v.

21
22 CHINA & ASIA TRAVEL SERVICE, INC.,
D/B/A CHINA INTERNATIONAL TRAVEL
23 SERVICE (USA), and DOES 1-10, inclusive,

24 Defendants.
25

CASE NO. 08-CV-01293 JSW

**NOTICE REGARDING PLAINTIFF'S
FAILURE TO FILE OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS AND REGARDING
PROCEDURAL POSTURE OF THIS
LITIGATION**

26 Following an inquiry to Defendant's counsel from the Court's Deputy Clerk regarding
27 Plaintiff's failure to file an opposition to Docket No. 5, Defendant's Motion to Dismiss or, in the
28 Alternative, for Summary Judgment on All Counts of Plaintiff's Complaint, as well as questions

1 regarding the procedural posture of this case, Defendant respectfully apprises the Court of the
2 following, noting that it has been Defendant's intent to apprise the Court of these and additional
3 facts in its soon-to-be-filed case management conference statement:

4 1. Notwithstanding representations made in a filing by Plaintiff and Plaintiff's former
5 counsel in this action (Docket No. 18), it is Defendant's understanding that Plaintiff is not presently
6 represented by counsel in this action, and that the gentleman substituted in as "counsel" in Docket
7 No. 18 is not an attorney. Plaintiff is apparently now proceeding *pro se*.

8 2. Plaintiff has not filed an opposition to Docket No. 5, Defendant's Motion to Dismiss or,
9 in the Alternative, for Summary Judgment on All Counts of Plaintiff's Complaint. Any such
10 opposition was due on July 7, 2008, pursuant to Court Order (Docket No. 22). Defendant believes
11 that its motion should be granted in all respects.

12 3. Instead of responding to Defendant's Motion after it was filed last March, Plaintiff
13 sought a stipulation delaying a hearing on the motion by nearly three months, ostensibly so that the
14 parties could conduct discovery relating to the issues raised by the Motion. Defendant agreed and
15 invested considerable resources compiling information responsive to Plaintiff's discovery requests,
16 and Defendant produced documents responsive to issues raised by the Plaintiff. Plaintiff, however,
17 never responded to any of Defendant's interrogatories, document requests or requests for
18 admissions.

19 4. Plaintiff has not filed a reply to Defendant's counterclaims (Docket No. 8). Plaintiff is
20 in default.

21 Defendant will file a case management conference statement addressing these and other
22 issues on Friday, August 22, 2008, but would welcome any further opportunities to apprise the
23 Court regarding the unusual procedural posture of this action.

1 DATED: August 20, 2008

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

3 By /s/ Robert McCauley

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